

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOMINICK GAFFNEY,

Plaintiff,

Index No.: 808735/2021E

-against-

FREDERICK MUNZ and UNITED NATURAL
FOODS, INC.,

Defendants.

NOTICE OF PETITION FOR
REMOVAL

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PLEASE TAKE NOTICE, that pursuant to 28 U.S.C.A. section 1446, Defendants FREDERICK MUNZ and UNITED NATURAL FOODS, INC. hereby remove the above-captioned case from Supreme Court of the State of New York, County of Bronx, Index No.: 808735/2021E to the United States District Court for the Southern District of New York, on the basis of diversity of citizenship conferred by 28 U.S.C.A. Section 1332.

Dated: New York, New York
March 22, 2022

Yours, etc.,

MORRISON MAHONEY LLP
Attorneys for Defendants
FREDERICK MUNZ and
UNITED NATURAL FOODS, INC.



Christopher P. Keenoy (CK-7443)
Wall Street Plaza
88 Pine Street, Suite 1900
New York NY 10005
212-825-1212
File No.: 10089511

TO:

DOUGLAS SHAYNE, ESQ.
BLUMEN & SHAYNE, P.L.L.C.
Attorneys for Plaintiff
2916 Shell Road, 5th Floor
Brooklyn NY 11224
718-618-0462

CERTIFICATE OF SERVICE

Kim Cuomo certifies that she is not a party to the within action, is over the age of 18, and resides in Brooklyn, New York.

That on the 22nd day of March, 2022 she served the within Notice of Petition of

Removal upon:

DOUGLAS SHAYNE, ESQ.
BLUMEN & SHAYNE, P.L.L.C.
Attorneys for Plaintiff
2916 Shell Road, 5th Floor
Brooklyn NY 11224

via E-File.

Kim Cuomo

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CHRISTOPHER P. KEENOY, a partner associated with the law firm of Morrison Mahoney, LLP, attorneys for defendants FREDERICK MUNZ and UNITED NATURAL FOODS, INC. (hereinafter “defendants”) submit the following Petition for Removal pursuant to 28 U.S.C.A. Section 1446, and Federal Rule of Civil Procedure 11.

1. Plaintiff commenced this action on or about June 24, 2021 in New York Supreme Court in Bronx County by filing a Summons and Verified Complaint, annexed hereto as **Exhibit “A.”**

2. Defendants were served via the Secretary of State on or about July 27 and July 28, 2021 (Affidavits of Service are annexed hereto as **Exhibit “B,”**) and now remove this case to the United States District Court for the Southern District of New York.

3. Defendants filed and served a Verified Answer on or about August 12, 2021, a copy of which is annexed hereto as **Exhibit “C.”**

4. As the contents of the Complaint were ambiguous as to the amount in controversy of plaintiff’s case, on August 12, 2021 Defendants served a Supplemental Demand for Relief pursuant to CPLR § 3017(c), a copy of which is annexed hereto as **Exhibit “D.”**

5. Having received no response to our Supplemental Demand for Relief, on November 12, 2021 Defendants sent good faith correspondence to plaintiff’s attorney requesting a response

within ten days. A copy of Defendants' good faith correspondence is annexed hereto as **Exhibit "E."**

7. On March 7, 2022 Defendants sent additional good faith correspondence advising that plaintiff's response to Defendants' Supplemental Demand for Relief remained outstanding. Annexed hereto as **Exhibit "F"** is a copy of this correspondence.

8. On March 7, 2022, plaintiff finally provided a response to Defendants' Supplemental Demand for Relief in which he demanded \$2,000,000.00 in damages. A copy of this response is annexed hereto as **Exhibit "G."**

9. The plaintiff is a citizen and resident of the State of New York, and upon information and belief, plaintiff is not a citizen or resident of the State of Delaware, Rhode Island, or Florida.

10. Defendant FREDERICK MUNZ is a resident of the State of Florida.

11. Defendant UNITED NATURAL FOODS, INC. is incorporated in the State of Delaware and has a principal place of business in the State of Rhode Island.

12. There is complete diversity of citizenship (Plaintiff is a New York resident; Defendant FREDERICK MUNZ is a Florida resident (per the Summons/Complaint); and UNFI is incorporated in Delaware with a principal place of business in Rhode Island). The amount in controversy is over \$75,000, per the attached Response to our Supplemental Demand for Relief.

13. In light of plaintiff's response to Defendants' Demand for Relief, it is now clear that the amount in controversy is alleged to be in excess of \$75,000.

14. Under 28 U.S.C. § 1446(b), a defendant has thirty days to remove a case from state court based on diversity jurisdiction after receiving a copy of the initial pleadings.

However, "[I]f the case stated by the initial pleading is not removable, a notice of removal may

be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.’ With respect to the amount of controversy requirement, the Second Circuit has specifically held that ‘the removal clock does not start to run until the plaintiff serves the defendant with papers that explicitly specifies the amount of monetary damages sought.’ Salinas v. Mirfakhraie, 2012 WL 3642419 at *1 (SDNY, 2012), *quoting* Moltner v. Starbucks Coffee Co., 624 F.3d 34, 38 (2d Cir. 2010).

15. As it is now clear from plaintiff’s March 7, 2022 response to Defendants’ Supplemental Demand for Relief that the amount in controversy exceeds \$75,000, and that this case is removable, Defendants now make this Petition, and Defendants’ petition is timely.

WHEREFORE, the Defendants FREDERICK MUNZ and UNITED NATURAL FOODS, INC. respectfully request that this action be removed to the United States District Court for the Southern District of New York.

Dated: New York, New York
March 22, 2022

Yours, etc.,

MORRISON MAHONEY LLP
Attorneys for Defendants
FREDERICK MUNZ and
UNITED NATURAL FOODS, INC.



Christopher P. Keenoy (CK-7443)
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